

allocation rights to produce or import chemicals produced or imported controlled substances listed in § 82.21(c).

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40 CFR Part 52

[WA-6-1-5519; FRL-4679-2]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) proposes approval of the state implementation plan (SIP) submitted by the State of Washington Department of Ecology (Ecology) for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀). Implementation plan submittals were made by Ecology on February 17, 1989 and November 15, 1991 to satisfy certain federal Clean Air Act requirements for an approvable moderate PM₁₀ nonattainment area SIP for Thurston County, Washington. This action to approve this plan has the effect of making requirements adopted by the Ecology federally enforceable by EPA. **EFFECTIVE DATE:** September 27, 1993. **ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT-082), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, Docket # WA-6-1-5519, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101; Washington Department of Ecology, 4450 Third Avenue, SE., Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Environmental Protection Agency, Air Programs Branch (AT-082), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6511.

SUPPLEMENTARY INFORMATION

I. Background

The Thurston County, Washington area was designated nonattainment for PM₁₀ and classified as moderate under

sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.¹ See 58 FR 56894 (November 8, 1993). The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.² EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those state submittals containing moderate PM₁₀ nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 12, 1993, EPA announced its proposed approval of the moderate nonattainment area PM₁₀ SIP for Thurston County, Washington (58 FR 13575-13579). In that rulemaking action, EPA described its interpretations of title I and its rationale for proposing to approve the Thurston County PM₁₀ SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate PM₁₀ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 1369. References herein are to the Clean Air Act as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, et seq.

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM₁₀ nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in this action and supporting information.

4. Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM₁₀ nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM₁₀ by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM₁₀ NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544).

II. Response To Comments

EPA received only one comment on its March 12, 1993, (58 FR 13575-13579) Federal Register proposal to approve the Thurston County moderate nonattainment area PM₁₀ SIP as a revision. An April 12, 1993, letter from Ecology pointed out that the EPA, incorrectly proposed to approve a Washington State regulation on open burning (Chapter 173-425 WAC) which bans all outdoor burning in all PM₁₀ or CO nonattainment areas. Ecology noted that the regulation has not been submitted to EPA as a SIP revision. After further review, EPA has determined that Ecology is correct, and that on January 15, 1993 (58 FR 4579), EPA adopted the October 18, 1990, version of Chapter 173-425 WAC. The 1990 version is the most recently submitted and does not include the open burning ban in nonattainment areas. EPA will continue to include the October 18, 1990 version in the Washington State Implementation Plan. The regulation is not relied on to attain or maintain the PM₁₀ standards, therefore not including an outdoor burning ban in the Thurston County SIP revision will not impact the approvability of the revision.

III. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565-13566). In this action, EPA is approving revisions to the Washington State Implementation Plan for the Thurston County PM₁₀ nonattainment area. SIP revisions were submitted to

On February 17, 1989 and November 15, 1991, EPA incorrectly referenced two letters from the Washington Department of Ecology as SIP revisions in the March 18, 1993 proposal. Letters dated December 26, 1989 and April 3, 1992 were actually additional discussion of previous SIP submittals. Since these letters were informational in nature, the SIP revisions were not altered and public review of the information was not necessary. EPA has determined that taken together the two SIP submittals (February 17, 1989 and November 15, 1991) meet all of the applicable requirements of the Act due November 15, 1991 and November 15, 1993. Among other things, the Washington Department of Ecology has demonstrated the Thurston County moderate PM₁₀ nonattainment area will attain the PM₁₀ NAAQS December 31, 1994.

EPA is approving the Thurston County, Washington nonattainment area contingency measure submitted by Ecology on November 15, 1991. In that submittal Ecology requested a conditional approval for the contingency measure. The regulation was subsequently adopted (January 3, 1992) and therefore EPA considers the contingency measure fully approved and part of the SIP.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 8, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 505(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 39).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603

and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: June 29, 1993.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of the Federal Register on July 1, 1982.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(41) to read as follows:

§ 52.2470 Identification of plan.

(c) * * *

(41) On February 17, 1989 and November 15, 1991, the State of Washington Department of Ecology submitted PM₁₀ nonattainment area state implementation plan revisions for Thurston County, Washington.

(i) Incorporation by reference.

(A) February 17, 1989 letter from Washington Department of Ecology to EPA Region 10 submitting the PM₁₀ nonattainment area state implementation plan for Thurston County, Washington.

(B) The PM₁₀ nonattainment area state implementation plan for Thurston County, Washington, as adopted by the Washington Department of Ecology on February 8, 1989.

(C) November 15, 1991 letter from Washington Department of Ecology to EPA Region 10 submitting revisions to the PM₁₀ nonattainment area state implementation plan for Thurston County, Washington.

(D) Revision to the PM₁₀ nonattainment area state implementation plan for Thurston County, Washington, as adopted by the Washington Department of Ecology on November 14, 1991.

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40 CFR Part 52

[Region II Docket No. 117 NY 5-1-5810; FRL-4678-8]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the approval of a request by the State of New York to revise its State Implementation Plan (SIP) for ozone. This revision was prepared by the New York State Department of Environmental Conservation to correct deficiencies in New York's SIP pursuant to a SIP call issued in 1988 and pursuant to section 182(a)(2)(A) of the